HAND DELIVERED

October 31, 2005

Gene Terland – Acting State Director
Utah State Director, Bureau of Land Management
440 West 200 South, 5th Floor
P.O. Box 45155
Salt Lake City, Utah 84145-0155

Re: Protest of Bureau of Land Management's Notice of Competitive Oil and Gas Lease Sale Concerning 38 Parcels in Emery and San Juan Counties

Greetings,

In accordance with 43 C.F.R. §§ 4.450-2 and 3120.1-3, the Southern Utah Wilderness Alliance, the Natural Resources Defense Council, The Wilderness Society, the Sierra Club, and the Grand Canyon Trust (collectively referred to as "SUWA") hereby protest the November 15, 2005 offering, in Salt Lake City, Utah, of the following 38 parcels in the Monticello and Price field offices:

Monticello field office: UT 149 and UT 155 (2)

Price field office: UT 049, UT 053, UT 054, UT 055, UT 056, UT 057, UT 058, UT 059, UT 060, UT 061, UT 062, UT 063, UT 064, UT 066, UT 069, UT 071, UT 072, UT 073, UT 074, UT 075, UT 076, UT 077, UT 078, UT 079, UT 080, UT 081, UT 082, UT 083, UT 084, UT 085, UT 086, UT 093, UT 094, UT 095, UT 096, and UT 097 (36)

As explained below, the Bureau of Land Management's (BLM's) decision to sell the 38 parcels at issue in this protest violates the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. (NEPA), the National Historic Preservation Act, 16 U.S.C. §§ 470 et seq. (NHPA), and the Endangered Species Act, 16 U.S.C. §§ 1531 et seq. (ESA), and the regulations and policies that implement these laws.

In sum, SUWA requests that BLM withdraw these 38 lease parcels from sale until the agency has fully complied with NEPA, the NHPA, and the ESA.

The grounds of this Protest are as follows:

A. Leasing the Contested Parcels Violates NEPA

1. Inadequate Pre-Leasing NEPA Analysis

The Interior Board of Land Appeals' recent decision in Southern Utah Wilderness Alliance, 166 IBLA 270, 285 (2005), expressly concluded that the BLM has not conducted an adequate pre-leasing NEPA analysis to support the sale and issuance of oil and gas leases within the Price River planning area. Thus, BLM's decision to offer, sell, and issue the following 12 leases UT 054, UT 055, UT 056, UT 057, UT 058, UT 059, UT 060, UT 061, UT 062, UT 063, UT 066, and UT 069 – contrary to the IBLA's decision in Southern Utah Wilderness Alliance, that BLM lacks the requisite NEPA analysis to do so – is arbitrary and capricious.[1]

2. BLM Has Not Analyzed the Full Impacts of Oil and Gas Leasing, Exploration, Development, and Reclamation, as Required By NEPA.

BLM has not analyzed the potential site-specific impacts of leasing and development on the protested parcels and therefore the sale of these parcels violates NEPA. NEPA requires the BLM to prepare an environmental impact statement whenever major federal actions may significantly alter the quality of the human environment. See 42 U.S.C. § 4332(2)(C). If BLM is uncertain whether an EIS should be prepared, NEPA's implementing regulations permit it to prepare an environmental assessment to determine whether an EIS is necessary. See 40 C.F.R. §§ 1501.4, 1508.9.

[1] The fact that BLM has sought reconsideration of the IBLA's decision in Southern Utah Wilderness Alliance does not change the fact that it is the Interior Department's position that the sale of these 12 parcels will violate NEPA. See 43 C.F.R. § 4.403.

The EA must provide sufficient evidence and analysis for determining whether to prepare an EIS, or to support a Finding of No Significant Impact. See id. § 1508.9. In this case, BLM prepared neither a pre-leasing EA nor EIS that considered, analyzed, and disclosed the environmental impacts of oil and gas development to the natural and cultural resources in the 38 leases at issue.

The Interior Board of Land Appeals and numerous courts have held that NEPA requires a site-specific EA or EIS for non-NSO proposed oil and gas leases because they constitute a full and irretrievable commitment of resources. See Southern Utah Wilderness Alliance, 159 IBLA 220, 240-43 (2003); Colorado Envtl. Coalition, 149 IBLA 154, 156 (1999); Conner v. Burford, 848 F.2d 1441 (9th Cir. 1988); Sierra Club v. Peterson, 717 F.2d 1409 (D.C. Cir. 1983).

All of the 38 protested parcels are being offered without NSO stipulations, meaning that they all (to some extent) authorize surface occupancy. Moreover, the environmental analyses previously prepared by the BLM for the contested parcels – i.e. EISs accompanying resource management plans; EAs accompanying oil and gas supplements and plan amendments; and, pre-FLPMA EARs – did not examine site-specific impacts of oil and gas leasing and development on wilderness and other important, sensitive public resources. For example, these documents failed to consider the potential impacts of roads, pipelines, drilling rigs, waste pits, and other drilling-related activities to the specific lands at issue.

Because the BLM has not adequately examined the potential impacts of leasing and development activities on all the contested parcels, the agency should withdraw the 38 protested parcels from the lease sale. The parcels should be offered for lease only after the agency prepares an EA or an EIS that describes, analyzes, and discloses the site-

specific effects of oil and gas exploration, leasing, development, and reclamation. In particular, a decision to postpone leasing the challenged parcels within the Price and Monticello field offices until these plans and NEPA analyses are finalized is appropriate because these field offices are preparing new land use plans with new leasing categories and stipulations. In the alternative, the BLM could avoid running afoul of NEPA by offering all the 38 contested parcels with NSO stipulations.

The significant congressional support for passage of America's Redrock Wilderness Act (H.R. 1774/ S. 882), a bill that was supported in the 108th Congress by 15 senators and 161 members of the House of Representatives, further argues for the preparation of a pre-leasing environmental assessment (EA) or environmental impact statements (EIS). If enacted, America's Redrock Wilderness Act would protect the public lands underlying all or parts of 32 of the protested parcels as wilderness: UT 055, UT 056, UT 057, UT 060, UT 066, and UT 069 (Price River CWP); UT 062 and UT 063 (Lost Spring Wash RPD); UT 064, UT 071 and UT 072 (San Rafael River RPD); UT 071, UT 072, UT 073, UT 074, UT 075, UT 076, UT 077, UT 078, UT 079, UT 080, UT 081, UT 082, UT 083, UT 084, UT 085, UT 086, UT 093, UT 094, and UT 097 (Sweetwater Reef RPD); UT 249 (Monument Canyon CWP) and UT 255 (Squaw and Papoose Canyon WIA).[2]

3. BLM Failed to Take the Required "Hard Look" at Whether Its Existing Analyses Are Valid in Light of New Information or Circumstances.

[2] The term "WIA" means wilderness inventory area; "CWP" means citizen wilderness proposal; and, the term "RPD" means reasonable probability (of wilderness characteristics) determination.

NEPA requires federal agencies to take a hard look at new information or circumstances concerning the environmental effects of a federal action even after an environmental assessment (EA) or an environmental impact statement (EIS) has been prepared, and to supplement the existing environmental analyses if the new circumstances "raise[] significant new information relevant to environmental concerns." Portland Audubon Soc'y v. Babbitt, 998 F.2d 705, 708-09 (9th Cir. 1993). Specifically, an "agency must be alert to new information that may alter the results of its original environmental analysis, and continue to take a 'hard look' at the environmental effects of [its] planned actions." Friends of the Clearwater v. Dombeck, 222 F.3d 552, 557 (9th Cir. 2000). NEPA's implementing regulations further underscore an agency's duty to be alert to, and to fully analyze, potentially significant new information. The regulations declare that an agency "shall prepare supplements to either draft or final environmental impact statements if . . . there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R § 1502.9(c)(1)(ii) (emphasis added).

As explained below, the Price and Monticello field offices failed to take a hard look at new information and new circumstances that have come to light since BLM finalized the Price River MFP and Price EAR, San Rafael RMP/EIS, and San Juan RMP/EIS, as well as subsequent oil and gas EAs. See also Pennaco Energy, 377 F.3d at 1162 (explaining that DNAs determine whether "previously issued NEPA documents were sufficient to satisfy the 'hard look' standard," and are not independent NEPA analyses). In addition, to the extent that these offices took the required hard look, its conclusion that it need not prepare a supplemental NEPA analysis was arbitrary and capricious.

1. *Wilderness Inventory Areas*

BLM has arbitrarily determined that the sale of lease parcel UT 155 – located partially within the Squaw and Papoose Canyon WIA – is appropriate, arguing that new information about this unit's wilderness characteristics is not "significant new information." BLM is wrong. The Squaw and Papoose Canyon WIA was inventoried between 1996-98 by the BLM as part of the agency's larger Utah wilderness inventory and determined to contain the necessary wilderness characteristics as defined in the Wilderness Act, 16 U.S.C. §§ 1131 et seq., for potential entry into the National Wilderness Preservation System. See Utah Wilderness Inventory, at vii-ix (1999) (excerpts attached as Exhibit 1). See also Map – Canyon Rim Area Lease Parcels (attached as Exhibit 2). As the BLM's wilderness inventory documentation explained,

> The Secretary's instructions to the BLM were to "focus on the conditions on the disputed ground today, and to obtain the most professional, objective, and accurate report possible so we can put the inventory questions to rest and move on." [The Secretary] asked the BLM to assemble a team of experienced, career professionals and directed them to apply the same legal criteria used in the earlier inventory and the same definition of wilderness contained in the 1964 Wilderness Act.

Id. at vii (emphasis added). As the result of this review, the BLM determined that its earlier wilderness inventories had failed to recognize 2.6 million acres of lands that met the applicable criteria in its prior reviews, including the Squaw and Papoose Canyon WIA. See State of Utah v. Babbitt, 137 F.3d 1193, 1198-99 (10th Cir. 1998) (discussing history of BLM's Utah wilderness inventories). Importantly, the San Juan RMP/EIS – prepared after the 1978-80 wilderness inventory – did not reanalyze the wilderness characteristics of lands that were passed over for wilderness study area status. Rather, the that plan and its accompanying NEPA analysis merely adopted the conclusion that lands not identified as WSAs did not contain wilderness characteristics.

As part of its 1996-98 wilderness inventory, BLM compiled comprehensive case files to support its findings that this WIA has wilderness characteristics, including numerous aerial and on-the-ground photographs, as well as a detailed narrative with accompanying source materials and SUWA incorporates these documents, located in the Utah State office, by reference to this protest. Based on the candid statements in these wilderness files that the 1998 Wilderness Inventory provided significant new information that has not been analyzed in existing NEPA documentation, it is clear that parcel UT 155 must be removed from the November 2005 sale list. BLM's failure to do so is a clear violation of NEPA because: (a) the 1996-98 wilderness inventory is undeniably new information, as BLM itself admits; (b) the 1988 wilderness inventory meets the textbook definition of what constitutes "significant" information; and (c) the sale of non-NSO leases constitutes an irreversible and irretrievable commitment of resources and thus requires a pre-leasing EIS.

Moreover, BLM cannot credibly claim that it has ever taken a hard look at the impact that oil and gas development would have on the wilderness characteristics of the WIAs because the wilderness case files post-date the 1991 San Juan RMP/EIS. At the time those documents were prepared, the BLM did not know that these areas contained wilderness quality lands. Hence, they could contain not the type of site specific information about the wilderness characteristics of the Squaw and Papoose Canyon WIA that was provided in the BLM's own 1998 wilderness inventory evaluation, nor could it analyze the impacts of energy development on those characteristics. That BLM's earlier land use plans and NEPA analyses may have discussed in general terms the values of these lands, is no substitute for the required hard look at the impacts of oil and gas development on wilderness characteristics. See Pennaco Energy, 377 F.3d at 1162

(explaining that DNAs determine whether "previously issued NEPA documents were sufficient to satisfy the 'hard look' standard," and are not independent NEPA analyses). In sum, BLM's own wilderness inventory evaluations and comprehensive case files constitute precisely the type of significant new information that requires additional environmental analysis before BLM approves the irreversible commitment of resources – the November 2005 lease sale.

2. *Reasonable Probability Determinations and Citizen Wilderness Proposal*

SUWA has provided new and significant information to the BLM regarding the wilderness characteristics of the Sweetwater Reef (UT 064, UT 071 and UT 072) and San Rafael River (UT 071, UT 072, UT 073, UT 074, UT 075, UT 076, UT 077, UT 078, UT 079, UT 080, UT 081, UT 082, UT 083, UT 084, UT 085, UT 086, UT 093, UT 094, and UT 097) proposed wilderness units and BLM has determined that there is a "reasonable probability" that these units "may have" wilderness characteristics. See Evaluation of New Information Suggesting that an Area of Public Lands has Wilderness Characteristics for San Rafael River and Sweetwater Reef (attached as Exhibit 3). See also Map – Green River Area Lease Parcels (attached as Exhibit 4). In 2002, SUWA submitted detailed new and significant information about the Lost Spring Wash proposed wilderness unit to the Price field office. See Southern Utah Wilderness Alliance Supplemental and New Information Re: Utah Wilderness Coalition's Lost Spring Wash Proposed Wilderness Unit (Feb. 2002) (attached as Exhibit 5). SUWA understands that this significant, new information has not yet been evaluated by BLM staff. SUWA also provided BLM with new information as part of its comments on the draft Price resource management plan regarding the wilderness values of a portion of the proposed Price River unit; BLM has

not yet reviewed this information. See Supplemental New Information re: Price River Wilderness Unit (attached as Exhibit 6).[3]

The same concerns identified supra regarding BLM's outdated land use plans and NEPA analyses applies to these lands that BLM determined have a reasonable probability that they may contain wilderness characteristics, as well as to the Lost Spring Wash and Price River proposed wilderness units. Specifically, BLM's plans and analyses assumed that – based on earlier desk exercise inventories (if they were conducted at all) – the lands now encompassed by the Sweetwater Reef, San Rafael River, Price River, and Lost Spring Wash proposed wilderness units lacked wilderness character altogether. The information that SUWA has supplied to BLM – and that BLM has reviewed and confirmed in some cases – is undeniably new, significant information about the on-the-ground conditions of these lands. Thus, BLM must prepare a supplemental NEPA analysis to evaluate this information before leasing these parcels.

3. *BLM Specialist Concerns*

The following concerns were identified by agency staff as instances where the existing NEPA analysis/land use planning allocations were insufficient to protect critical resources. The record does not contain an explanation why this significant new information was ignored and the concerns not incorporated into lease sale stipulations/lease notices, or why these parcels were not deferred from the November 2005 lease sale pending completion of additional NEPA analysis.

a. **Price field office**

[3] The Price field office has already determined – through intensive field inventories – that over 100,000 of the Utah Wilderness Coalition's Price River proposed wilderness unit has wilderness characteristics.

UT 049: Agency staff identified a stipulation (UT-S-48) that should be included to protect endangered fish species. Lease parcel UT 049 does not contain the proposed stipulation.

UT 053: Agency staff identified a stipulation (UT-S-04) that should be included to protect the "Gilson Butte Well:" "A stipulation should be included for this parcel to limit surface occupancy around the existing Gilson Butte Well." Lease parcel UT 053 does not contain the proposed stipulation.

UT 054: Realty specialist Mark Mackiewicz stated that "[l]ocated within Tract 052 and 054 is public water reserve (UTU-52738). Although the water reserve does not preclude leasing the subject lands, it is imperative that a lease stipulation be attached to protect this water. …" Lease parcel UT 054 does not contain the proposed stipulation.

UT 058, UT 061, UT 080, and UT 093: Realty specialist Mark Mackiewicz identified several roads rights-of-way within these parcels and stated that "a special stipulation should be incorporated that would ensure their protection and also alert the lessee that some significant acreage is encompassed by these facilities." None of these lease parcels contain the proposed stipulation.

UT 064: Agency staff identified a stipulation (UT-S-04) that should be included to protect the "Rattlesnake Well:" "A stipulation should be included for this parcel to limit surface occupancy around the existing Rattlesnake Well." Lease parcel UT 064 does not contain the proposed stipulation.

UT 072: Agency staff identified a stipulation (UT-S-04) that should be included to protect an "existing Well:" "A stipulation should be included for this parcel to limit surface occupancy around the existing Well." Lease parcel UT 072 does not contain the proposed stipulation. Agency staff also identified a stipulation (UT-S-14) that should be included to protect a spring located in Section 28 – lease parcel UT 072 does not contain the proposed stipulation.

UT 079: Agency staff identified a stipulation (UT-S-04) that should be included to protect an "existing Well:" "A stipulation should be included for this parcel to limit surface occupancy around the existing Well." Lease parcel UT 079 does not contain the proposed stipulation.

UT 080: Agency staff identified a stipulation (UT-S-04) that should be included to protect an "existing Well:" "A stipulation should be included for this parcel to limit surface occupancy around the existing Well." Lease parcel UT 080 does not contain the proposed stipulation.

b. **Monticello field office**

UT 149: In correspondence to the U.S. Fish and Wildlife Service, the Monticello field office manager noted that for several years the "Utah Division of Wildlife Resources has been conducting point count surveys for the Southwestern willow

flycatcher within Monument Canyon (a canyon within the same watershed and within the proposed parcel UT 149). To date, no willow flycatchers have been seen or heard during these surveys." A lease notice/stipulation that this parcel may be located in Southwestern willow flycatcher habitat is appropriate to ensure that such habitat is protected. Lease parcel UT 149 does not contain any such lease notice/stipulation to protect this resource.

B. Leasing the Contested Parcels Violates the NHPA[4]

BLM's decision to sell and issue leases for the 38 parcels at issue in this protest violates § 106 of the NHPA, 16 U.S.C. § 470(f) and its implementing regulations, 36 C.F.R. §§ 800 et seq. Specifically, BLM's conclusion that that the November 2005 oil and gas lease sale will have "no adverse effect" to cultural resources" (Monticello field office) or "no effect" cultural resources in the San Rafael Desert. (Price field office) is arbitrary and capricious.[5]

As Utah BLM has recognized for some time, the sale of an oil and gas lease is the point of "irreversible and irretrievable" commitment and is therefore an "undertaking" under the NHPA. See BLM Manual H-1624-1, Planning for Fluid Mineral Resources, Chapter I(B)(2); see also 36 C.F.R. § 800.16(y); Montana Wilderness Assoc. v. Fry, 310 F. Supp. 2d 1127, 1152-53 (D. Mont. 2004); Southern Utah Wilderness Alliance, 164 IBLA at 21-28. The NHPA's implementing regulations further confirm that the "[t]ransfer, lease, or sale of property out of federal ownership and control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance" constitutes an "adverse effect" on

[4] To the extent that BLM's issued Instruction Memorandum 2005-003 Cultural Resources and Tribal Consultation for Fluid Mineral Leasing, Oct. 5, 2004, is inconsistent with the Interior Board of Land Appeals' decision in Southern Utah Wilderness Alliance, 164 IBLA 1 (2004), the BLM must comply with the IBLA's interpretation of the agency's duties under the NHPA. See 43 C.F.R. § 4.1(b)(3).

[5] The Price field office DNA and multiple staff reports arrive at different conclusions as to whether the November 2005 lease sale has "no potential to effect," "no effect," or "no adverse effect" on cultural resources. SUWA is relying on the final DNA worksheet's statement that the lease sale would have "no effect" on historic properties. See Price DNA at 5. In its letter to SHPO, however, BLM conceded that the sale of 26 parcels in the San Rafael Desert region "could result in adverse effects." See Letter from Patrick Gubbins to Wilson Martin, August 30, 2005.

historic properties. Id. § 800.5(a)(2)(vii) (emphasis added). See 65 Fed. Reg. 77689, 77720 (Dec. 12, 2000) (Protection of Historic Properties – Final Rule; Revision of Current Regulations) (discussing intent of § 800.5(a)(2)(iii)).

The Price DNA, however, erroneously states that, despite the field office archeologist's well-documented conclusions that any level of oil and gas exploration activities (activities authorized by the sale of non-NSO oil and gas leases) in the San Rafael Desert will adversely effect cultural resources, the sale of parcels UT 064, UT 071 through UT 086, and UT 093 through UT 097 will in fact have "no effect" on cultural resources. See Price DNA at 5 (asserting that Price field office managers "determined that because there is no documentation, field work, cultural survey documentation, science, or clear rationale, to substantiate a 'may adversely effect' determination, to change the determination to no effect and move forward with leasing these parcels."). But see Cultural Resource Assessment of BLM's Offered Oil & Gas Lease Sale Parcels #UT1105-048 TO UT1105-059, UT1105-064 TO UT1105-065, UT1105-071 TO UT1105-086, UT1105-093 TO UT1105-099; Carbon and Emery Counties, Utah at unnumbered 7-9 (parcel assessment)[6] (describing affected environment for San Rafael Desert parcels and – relying on decades of personal experience, research and discussions with other archeologists – detailing risk to cultural resources from leasing and development; concluding that the "[l]ease of these parcels will adversely affect historic properties."); Letter from Patrick Gubbins to Wilson Martin, SHPO (Aug. 30, 2005) (admitting that the sale of San Rafael Desert region leases "could result in adverse effects" to cultural resources). The lease stipulation and notice attached to the San Rafael Desert parcels are insufficient for BLM to propose a "no effect" finding (as stated in the

[6] This report is included in the Price DNA, Appendix C (Staff Reports).

DNA) and thus BLM's decision to proceed with the sale of these leases is arbitrary and capricious.

In addition, brief conversations with, or form letters to, tribal councils or leaders regarding the potential effects of oil and gas leasing and development are insufficient to meet BLM's duty under the NHPA to make a "reasonable and good faith effort" to seek information from Native American tribes. See Pueblo of Sandia v. United States, 50 F.3d 856 (10th Cir. 1995). To the extent that the Price and Monticello field offices undertook limited efforts to involve Native American tribes, these efforts were inadequate because the form letters, legal descriptions, and maps do not inform the various Native American tribes that these offices had arrived at "no adverse effect" and "no potential to effect" findings and thus were seeking agreement to that finding, as opposed to soliciting general comments about the undertaking.[7] In particular, the form letters sent to various tribes by the Price field office manager did not explain the research that field office archeologist had prepared regarding the sale of parcels in the San Rafael River and Sweetwater Reef areas (generally referred to as the "San Rafael Desert") or detail the archeologist's concerns about adverse effects to this important area from any future exploration activities.

In addition, despite being asked by BLM to do so, there is no record that the SHPO has concurred with either the Price office's "no effect"/"could result in adverse

[7] As noted supra, it is unclear exactly what determination the Price field office has made regarding the potential effect of oil and gas operations to cultural resources in the San Rafael Desert region. The Price DNA states that the field office managers have arrived at a "no effect" finding for the lease sale, but in a letter to the SHPO, BLM conceded that the sale of 26 parcels in the San Rafael Desert region "could result" in adverse effects. This lack of clarity, and BLM's decision to reject the well-stated findings of its own staff archeologist, undermines the agency's conclusion that the sale of these leases will have "no effect."

effect" finding or the Monticello office's "no adverse effect finding." BLM will violate the NHPA if it issues these leases without concurrence from SHPO.

BLM is further violating the NHPA by failing to adequately consult with members of the interested public regarding the effects of leasing all the protested parcels. Such consultation must take place before the BLM makes an irreversible and irretrievable commitment of resources – in other words before the November 2005 lease sale. See Southern Utah Wilderness Alliance, 164 IBLA 1 (2004). The NHPA requires BLM to "determine and document the area of potential effects, as defined in [36 C.F.R.] § 800.16(d)," identify historic properties, and to affirmatively seek out information from the SHPO, Native American tribes, consulting parties, and other individuals and organizations likely to have information or concerns about the undertaking's potential effects on historic properties. 36 C.F.R. § 800.4(a). See Southern Utah Wilderness Alliance, 164 IBLA at 23-24 (quoting Montana Wilderness Assoc., 310 F. Supp. 2d at 1152-53). The NHPA further states that BLM shall utilize the information gathered from the source listed above and in consultation with at a minimum the SHPO, Native American tribes, and consulting parties "identify historic properties within the area of potential affect." Id. § 800.4(b). See id. § 800.04(b)(1) (discussing the "level of effort" required in the identification process as a "reasonable and good faith effort to carry out appropriate identification efforts").

In addition, the DNA process violates the NHPA and Protocol § IV.C., which states that "BLM will seek and consider the views of the public when carrying out the actions under terms of this Protocol."[8] As BLM's DNA forms plainly state, the DNA

[8] Because the National Programmatic Agreement – which the Protocol is tiered from – was signed in 1997, well before the current NHPA regulations were put in place, it is questionable whether either document

process is an "internal decision process" and thus there is no opportunity for the public to participate in the identification of known eligible or potentially eligible historic properties. Permitting public participation only at the "protest stage," or arguing that the time period for seeking public input ended when BLM completed its dated resource management plans, is not equivalent to encouraging participation in an open NEPA process, and BLM should withdraw the 38 parcels in the Price and Monticello field offices that are the subject of this protest.

C. Leasing the Contested Parcels Violates the ESA

There is no record that the Price field office either initiated or completed informal consultation with the U.S. Fish and Wildlife Service regarding the November 2005 lease sale, though several of the FWS's 2004-2005 letters to the Utah State office identified potential threatened and endangered species within several of the parcels proposed for sale. A decision to sell and issue the 36 leases in the Price field office without first completing informal – or, if required, formal – consultation with the Fish and Wildlife Service will violate the ESA. See Montana Wilderness Assoc. v. Fry, 310 F. Supp. 2d at 1149; Wyoming Outdoor Council, 153 IBLA at 388-89; Conner v. Burford, 848 F.2d 1441, 1453 (9th Cir. 1988).

REQUEST FOR RELIEF

SUWA requests the following appropriate relief: (1) the withdrawal of the 38 protested parcels from the November 2005 Competitive Oil and Gas Lease Sale until such time as the agency has complied with NEPA, the NHPA, and the ESA or, in the alternative (2) withdrawal of the 38 protested parcels until such time as the BLM attaches no-surface occupancy stipulations to all protested parcels.

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remains valid. This further reinforces the need for BLM to fully comply with the NHPA's Section 106 process.

This protest is brought by and through the undersigned legal counsel on behalf of the Southern Utah Wilderness Alliance, the Natural Resources Defense Council, The Wilderness Society, the Sierra Club and the Grand Canyon Trust. Members and staff of these organizations reside, work, recreate, or regularly visit the areas to be impacted by the proposed lease sale and therefore have an interest in, and will be affected and impacted by, the proposed action.

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